IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

NO. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 826/2001
(Old No. 2491/1988)

Munsha Singh & others — Appellants.

Vs.

State — Respondent.

Decided on 18-04-2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(P.C.Verma, J.)

(B.C. Kandpal, J.)

Dated: 18-04-2006

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 826/2001
(Old No. 2491/1988)

1- Munsha Singh S/o Hira Singh,

2- Santokh Singh S/o Munsha Singh,

3- Chhinda Singh @ Surendra Singh
S/o Munsha Singh

4- Smt. Maya Kaur D/o Munsha Singh,
All residents of Barkatpur, P.S. Sitarganj,
District Nainital ……. Appellants.

Versus

State …. Respondent

Sri Dharam Veer Sharma, Senior Advocate, learned counsel for the appellants.
Sri G.S. Sandhu, learned A.G.A. for the State.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 18-04-2006

The appellants have preferred this appeal against the judgment and order dated 14-10-1988, passed by the Sessions Judge, Nainital, in S.T. No. 52 of 1986, whereby the accused/appellants were convicted U/S 302/34 I.P.C.; 324/34 I.P.C.; 324/34 I.P.C. and 323/34 I.P.C. and each of them were sentenced to imprisonment for life U/S 302/34 I.P.C.l; three years R.I. U/S 324/34 I.P.C.; further three years R.I. U/S 324/34 I.P.C. and six months R.I. U/S 323/34 I.P.C. However, all the sentences were to run concurrently.

2- The prosecution version which led to the trial of the accused/ appellants is as follows:-

Km. Maya Kaur, daughter of accused Mansha Singh had been engaged with one Shamsher Singh S/o Gurdayal Singh, resident of Village Kalyapur. Some time later the engagement was broken. Accused Mansha Singh and other members of his family felt that Kala Singh had prayed a role which led to the breaking of said engagement. As a result Munsha Singh and his other family members were angry with Kala Singh and his other family members. Two days prior to the present incident, when Kala Singh reached in

front of the door of the house of Munsha Singh, on the way to his home, the accused Munsha Singh and his son Santokh Singh made an assault on him. However, Kala Singh wriggled out himself from them and ran to his house.

3- According to the prosecution case the present incident occurred at about 8 A.M. on 21-11-1985. It is alleged that accused Mansha Singh accompanied by his sons accused Santokh and Chhinda Singh as well as his daughter Km. Maya entered into the Jhala (house) of Kala Singh and started abusing him and other accused were taunting that Kala Singh and his family members were responsible for the defamation of accused Km. Maya Kaur. The accused Munsha Singh was armed with a sword while accused Chhinda Singh and Santokh Singh were having Kampa (Daoo) and spear respectively. Accused Km. Maya Kaur was having a Lathi. The accused persons challenged Kala Singh and his family members that they would not leave them alive and all of them started beating the members of Kala Singh's family. Kala Singh and his father Manta Singh ran out of the house towards east. The accused nevertheless administered beating to Kala Singh's sisters Swarn Kaur and Jamuna Kaur as well as to his mother Smt. Vira Bai with their respective weapons. After that they chased Kala Singh and his father Manta Singh and succeeded in over powering Manta Singh in the vacant field of Jogendra Singh. All the accused then assaulted Manta Singh with their respective weapons in that vacant field. Manta Singh sustained injuries on his person and succumbed to the injuries on the spot itself. The occurrence was seen by witnesses Narain Singh, Karnail Singh etc on whose challenge the accused left the spot and fled away from there. At about 12-30 P.M. on the day of the incident, i.e. 21.11.1985, Kala Singh went at Police Out Post Nanakmatta (P.S. Sitarganj) and on his dictation chick F.I.R., Ext. Ka.1 was drawn by Head Moharir Ram Swaroop Singh at Out Post Nanakmatta, P.S. Sitarganj. After registration of the case against the accused persons, S.I. J.B. Singh started investigation in the case. On 21-11-1985 the Investigating Officer reached at the spot and performed inquest on the dead body of Manta Singh and sent the dead body for post mortem examination.

4- The injured Smt. Vira Bai, Km. Swarn Kaur and Km. Jamuna Kaur were medically examined by the doctor at P.H.C. Nanakmatta on the day of the incident itself.

5- On 28-11-1985 the investigation was transferred to Sri Kartar Singh, who at the time of the incident was posted as Inspector Incharge at P.S. Sitarganj. The Investigating Officer after completing the investigation, submitted charge sheet, Ext. Ka.6 against the accused persons. The report received from Joint Director, Forensic Laboratory, Agra is paper Nos. 17 and 18 on the record.

6- On committal of the accused persons of the court of Sessions, the Sessions Judge framed charges U/S 302/34 I.P.C. for committing the murder of Manta Singh, U/S 324/34 I.P.C. for causing hurt to Km. Jamuna Kaur, U/S 324/34 I.P.C. for causing hurt to Km. Swarn Kaur and U/S 323/34 I.P.C. FIR causing hurt to Smt. Veera Bai. The accused persons denied the charges and claimed their trial.

7- The prosecution to prove its case, in all examined 7 witnesses, P.W.1, Kala Singh is the informant. He is also an eye witness of the occurrence. According to him engagement of accused Km. Maya Kaur was fixed with Samsher Singh but later on Samsher Singh had broken the engagement and the accused persons felt that he had prayed role in breaking the engagement of Km. Maya Kaur. He deposed that two days prior to the present incident when he at about 4 P.M. was returning to his home and reached on the way in front of the house of the accused Munsha Singh and Santokh Singh ran towards him with intention as assault him on the pretext that he had broken the engagement of accused Km. Maya Kaur. The witness escaped from the accused persons and ran towards his house. This witness further deposed that on the day of the occurrence when he, his father Manta Singh, his mother Vira Kaur, and his sisters Swarn Kaur and Jamuna Kuar were at their house, accused persons Munsha Singh, Santokh Singh, Chhinda Singh and Km. Maya Kaur reached at his house abusing them as to why they had broken the engagement of accused Km. Maya Kaur. Accused Munsha Singh was armed with a sword while Santokh Singh was having a Ballam, Chhinda Singh was having a Kampa (Daoo) and Km. Maya Kaur was armed with Lathi. The accused persons were challenging Kala Singh and his

family members that they will not leave them alive and thereupon entered inside the house, Kala Singh and his father Manta Singh ran away from the house whereas the other occupants of the house namely Smt. Vira Kaur, Km. Swarn Kaur and Km. Jamuna Kaur were assaulted by the accused persons. This witness also deposed that the accused persons after assaulting his mother and sisters also chased him and his father. The accused persons surrounded Manta Singh in the vacant filed of Jogendra Singh and assaulted Manta Singh with their respective weapons, due to which Manta Singh succumbed to the injuries at the spot itself. When this witness raised alarm, Bhajan Singh, Kehar Singh, Karnail Singh, Narain Singh had also reached at the spot and thereafter the accused person fled away from the spot. This witness further stated that thereafter he went at Police Chauki Nanakmatta and lodged the report. He has proved the chick report Ext. Ka.1.

8- P.W.2, Km. Jamuna Kaur and P.W.3, Km. Swarn Kaur are the injured eye witnesses of the occurrence. Both the witnesses have deposed the prosecution story as stated by P.W.1, Kala Singh. They have stated about the specific weapons the accused persons were holding at the time of the occurrence. These witnesses have deposed that accused Munsha Singh was armed with a sword, accused Santokh Singh was armed with a Ballam, accused Chhinda Singh was having a Kanta while the accused Km. Maya Kaur was having a Lathi. They further deposed that all the accused persons assaulted them and their mother and thereafter they chased their brother Kala Singh and father Manta Singh, who had run away from their house when the accused entered inside their house. They are also the witnesses of the occurrence of assault made by the accused on the deceased Manta Singh. Witnesses deposed that when they came out their house they saw the accused persons assaulting their father Manta Singh in the vacant field of Jogendra Singh and on receiving the injuries Manta Singh had died at the spot itself.

9- P.W.4, Dr. Suresh Chandra Pant has conducted the post mortem on the dead body of deceased Manta Singh and found the following ante mortem injuries on his person:-

1- Incised wound 5cm x 1cm x bone deep over the right side of forehead, 3.5 cm above the upper eyebrow. Margin everted. Tail of the wound directing upwards and backwards. Clotted blood present.
2- Incised wound 4cm x .5 cm x bone deep over left side of scalp at top of head, 11cm above the upper margin of the left ear. Margins everted. Clotted blood present. Transversely placed.
3- Incised wound 3.5cm x .5cm x bone deep, 1cm medial to right ear. Margins everted downwardly directed. Cross-section clotted blood present.
4- Contusion 2.5cm x 1.5cm over the top scalp 3cm above the injury no.3. Cross section clotted blood present.
5- Bluish contusion over the right upper eyelid in an area of 2.5cm x 1.5cm. Cross section clotted blood present.
6- Lacerated wound 1cm x .5cm x muscle deep over the left side of abdomen 20 cm lateral to umbilicus and 8cm above the left iliac crest. Cross section clotted blood present.
7- Contusion 6cm x 2cm over the right side to chest obliquely placed 2.5cm below the right nipple. Cross section clotted blood present.
8- Abrasion 1cm x .5cm over the left thigh 10cm above the left knee. Cross section clotted blood present.
9- Lacerated wound 1.5cm x .5cm x muscle deep over the lateral aspect of right thigh 10cm above the right knee joint. Cross section clotted blood present.
10- Two parallel 11 cm x .5cm contusions 1cm apart over the back extending obliquely and medially from the lower angle of left scapula. Cross section blood present.

On internal examination the doctor found the frontal bone, right temporal bone and left parietal bone fractured. In the scalp beneath injury Nos. 1,2 and 3 there was clotted blood in the thorax. Membranes were congested. Both the chambers of heart were filled with blood. 4^{th} and 5^{th} ribs on the right side in the line of midclavicular were fractured. In the opinion of the doctor death was

caused due to the head injuries. This witness has proved the post mortem examination report, Ext. Ka.2.

10- P.W.5, Dr. Birendra Singh has medically examined the injured on 21.11.1985, the day of incident itself. According to him at 12.55 P.M. he medically examined injured Km. Jamuna Kaur and found the following injuries on her person:-

1- Incised wound 4cm x 1cm x bone deep occipital protuberance, bleeding present. Margin everted and clean cut.
2- Incised wound 8cm x 5cm x muscle deep over medial side of left hand. Fresh bleeding present with clean cut everted margins.
3- Linear oblique abrasion at middle lower of thorax back 305cm x 0.2cm.
4- Abraded contusion 11cm x 0.5cm on right buttock across.
5- Contusion 3cm x 3cm over left knee joint.
6- Incised wound 3.5cm x 0.5 cm x bone deep above left ear.

In the opinion of the doctor all the injuries were fresh in Duration. Injury Nos. 1, 2 and 6 were caused by sharp edged object, injury No.3 caused by friction and injury Nos. 4 and 5 were caused by blunt hard object.

The doctor at 1.55 P.M. the same day medically examined injured Km. Swarn Kaur and found the following injuries on her person:-

1- Incised wound across bone 10cm x 2.5cm, margins clean cut, fresh bleeding with margins everted. Wound encircling left thumb.
2- Incised wound 6cm x 1cm x bone deep vertical just above ankle of right side laterally.
3- Contusion 7cm x 6cm lateral side (left) occipital protuberance.
4- Contusion 6cm x 4cm on upper right scapula region.

In the opinion of the doctor the duration of the injuries was fresh. Injury Nos. 1 and 2 were caused by sharp edged object and injuries Nos. 3 and 4 were caused by blunt hard object. Nature of injuries was simple.

At 2.50 P.M. the same day, this witness also examined injured Smt. Vira Bedi and found following injuries on her person:-

1- Contusion 7cm x 5cm over scalp, 8cm above left ear.
2- Contusion transverse 11cm x 2cm on lower part left back thoracic region.
3- Contusion transverse 7cm x 2cm on lower part of right back thoracic region.
4- Contusion 17cm x 6cm oblique lateral and posterior part, middle of left thigh.
5- Contusion 13cm x 5cm front middle and upper part of left thigh.
6- Abraded contusion with oozing blood 6cm x 4cm on posterior part of right elbow joint.
7- Contusion 7cm x 4cm upper and outer part of right arm.

In the opinion of the doctor the patient was feeling difficulty in Walking. All the injuries were fresh in duration and caused by blunt hard object. The witness also proved the injury reports of the above injuries Ext. Ka.3, Ka.4 and Ka.5 respectively.

According to this witness on 21.11.1985 itself he also medically examined accused Km. Maya Kaur and found the following injuries on her person:-

1- Stab wound 1.5cm x 0.5cm x 2cms extending medically downwards 1.5cm above left eye brow with fresh bleeding present.
2- Incised wound 1cm x 0.4cm x muscle deep transverse on left palm with fresh bleeding present; margins were clean cut and everted tapering outwards.
3- Lacerated wound 3cms x 0.5 cms x bone deep, 7cms above right ear longitudinal with fresh bleeding present.
4- Contusion 8cm x 3cm on the left upper scapular region.

The doctor has proved the injury report, Ext. Kha.1. In his opinion the injuries were caused by hard object.

According to this witness on 21.11.1985 itself he also medically examined accused Munsha Singh and found the following injury on his person:-

"Stab wound 2.5 x 1cm x 3cms on the upper medial part of left thigh with fresh bleeding present."

In the opinion of the witness the injury was caused by hard object and also proved the injury report Ext. Kha.2.

11- P.W.6 Karnail Singh has stated in her statement on oath that the occurrence had taken place at about 8 A.M. He was going to Deen Nagar from village Khempur riding on a tractor and when he reached near the Jhala(house) of Manta Singh, he heard noise and saw that Manta and his son Kala Singh were running towards east after coming out from their house and Munsha Singh armed with sword, Maya Kaur armed with Lathi, Santokh Singh having Ballam and Chhinda Singh having Kanta were chasing them. The accused persons were telling that they will not leave them alive. Narain Singh also reached there and Santa Singh saw the incident from his house. He further deposed that the accused persons assaulted Manta Singh with their weapons in the field of Jogendra Singh. Manta Singh fell down on the field and died instantaneously. Thereafter on the challenge of the witnesses the accused persons fled away from the spot.

12- P.W.7, Sri Kartar Singh, Dy. S.P. is the second Investigating Officer of the case. He has stated that the investigation was started by S.I. J.B. Singh and on 28-11-1985 the investigation was transferred to him. After completion of investigation he submitted charge sheet, Ext. Ka.6 against the accused persons. He also deposed that Chick F.I.R., Ext. Ka.1 was prepared by H.C. Ram Swaroop and he also made G.D. entry at report No. 14 regarding registration of case against the accused persons, the carbon copy of which was proved by this witness as Ext. Ka.7.

13- The accused persons in their statements U/S 313 Cr.P.C. have denied the prosecution allegation and stated that they were falsely implicated in the case with the connivance of Police. Accused Munsha Singh also stated that on the day of alleged incident in the morning his daughter Km. Maya Kaur had gone to ease herself. Kala Singh tease her whereupon Kala Singh and Manta Singh assaulted him whereas Jamuna Kaur and Swarn Kaur assaulted Km. Maya Kaur.

14- The accused have also lodged cross F.I.R. of the incident at Police Out Post Nanakmatta, P.S. Sitarganj and a case U/Ss 323, 354, 324, 323 I.P.C. was also registered against Manta Singh, Kala Singh, Jamuna Kaur and Swarn Kaur, copies of cross F.I.R. and registration of case were filed on the record as Ext. Kha. 3 and Kha.4 respectively.

15- The trial court on assessment of evidence on record held the accused/appellants guilty for an offence punishable U/Ss 302/34 I.P.C., 324/ 34 I.P.C., 324/34 I.P.C. and 324/34 I.P.C. and each of them were sentenced to imprisonment for life U/S 302/34 I.P.C.; three years R.I. U/S 324/34 I.P.C.; further three years R.I. U/S 324/34 I.P.C. and six months R.I. U/S 323/34 I.P.C.

16- Being aggrieved, the accused/appellants have come up in appear before this Court.

17- During pendency of the appeal, appellants Munsha Singh and Smt. Maya Kaur had died and the appeal was abated against them vide Court's order dated 2-7-2004.

18- We have heard the learned counsel for the appellants, learned A.G.A. and perused the record.

19- Learned counsel for the appellants has first of all argued that the motive, as has been alleged by the prosecution in this case, is quite weak. He has also invited our attention towards the counter version given in the first information report lodged by the appellant Munsha Singh that the complainant side teased his daughter and thereafter complainant side assaulted him and his daughter Maya Kaur, who also sustained injuries.

20- In a case of direct evidence, the motive does not play any important role. Further in the instant case it reveals from the first information report lodged by P.W.1, Kala Singh, the informant of this case, that Maya Kaur (appellant) was to be married with the son of Sardar Gurdayal Singh of Village Kalyanpur, but that marriage any how was broken and Munsha Singh had an impression that it was on account of the complainant side, this marriage was broken. It was the cause of annoyance with the accused/appellants to commit Marpit on the date of the occurrence. The counter version which has been advanced by the appellant Munsha Singh in his first information

report, reveals that Maya Kaur D/o accused/appellant Munsha Singh had gone to defalcate in a mango grove, Kala Singh S/o Manta Singh tease his daughter and when Maya Kaur raised an alarm, then Kala Singh, Manta Singh, Swarn Singh and Jamuna Kaur assaulted Maya Kaur and her father Munsha Singh. It, therefore, appears from the evidence on record that both the parties had some inimical grudge against each other and both the parties had a motive to implicate each other in any case. This factum also further clarifies the situation that on account of the aforesaid enmity the incident to Marpit took place, in which Jamuna Kaur, Swarn Kaur, Vira Kaur sustained injuries on their persons and Manta Singh also succumbed to injuries on the side of the complainant, while Munsha Singh and Maya Kaur also sustained injuries on their persons.

21- As far as the first information report of the incident is concerned, that has been lodged by the complainant Kala Singh, P.W.1, at the Police Station on 21.11.85 at 12.30 P.M. The distance of the Police Station from the place of the occurrence is about four kilometers. The incident is alleged to have taken place on 21-11-1985 at about 8 A.M. The explanation for causing the delay, has been given by the informant that he took the injured persons to the Police Station and lodged the report over there. However, there does not appear to be any inordinate delay in lodging the first information report, which may create a doubt with regard to this aspect of the matter that on 21-11-1985 the alleged incident of Marpit between the accused/appellant and the complainant side took place, in which both the sides sustained injuries on their persons.

22- As far as the ocular version is concerned, the prosecution has produced P.W.1, Kala Singh, who is the informant of the case, as well as P.W.2, Jamuna Kaur and P.W.3, Swarn Kaur, who are the injured eye witnesses of the occurrence. Kala Singh in his deposition has stated that the occurrence took place at about 8 A.M. on 21.11.85 and at that time he along with his father Manta Singh, mother Smt. Vira Kaur and sisters Jamuna Kaur and Swarn Kaur were present inside their house, called ‘Jhala’. He has further stated that two days before this occurrence he was accosted by Munsha Singh and his son Santokh Singh in front of their house. He further deposed that at the

relevant time when he was returning home from another village and when he reached in front of the door of the house of the accused at about 4 P.M. both the accused/appellants Munsha Singh and Santokh Singh, who were standing on the door of their house, threatened Kala Singh with dire consequences because of the reason that Kala Singh was responsible for the breaking of the marriage engagement of accused/appellant Maya Kaur. Kala Singh further deposed that appellant Munsha Singh armed with sword, Santokh Singh armed with Ballam, Chhinda Singh armed with Kampa (Daoo) and Km. Maya Kaur armed with Lathi entered into their house and started beating. He and his father Manta Singh however escaped unhurt and ran out from the house towards east. The appellants assaulted Km. Jamuna Kaur and Swarn Kaur and also their mother Smt. Vira Bai. The appellants also chased Kala Singh and his father Manta Singh and succeeded in over pouring Manta Singh. Thereafter all the appellants beat Manta Singh with their respective weapons as a result of which Manta Singh fell on the spot and died. Kala Singh has denied having caused any injuries to the accused/appellants Munsha Singh and Maya Kaur. The defence suggested to this witness that on the alarm raised by Km. Maya Kaur, her father Munsha Singh came at the spot and both of them were assaulted by Manta Singh, Jamuna Kaur, and Swarn Kaur causing injuries on their persons.

23- The testimony of Kala Singh has been corroborated by Km. Jamuna Kaur and Km. Swarn Kaur, P.W.2 and P.W.3 respectively. These two injured witnesses have stated in their evidence that accused/appellants Munsha Singh with sword, Santokh Singh with Ballam, Chhinda Singh with Kampa (Daoo) and Maya Kaur with Lathi entered into their ‘Jhala’ and started beating them saying that they were responsible for the defamation of Maya Kaur (accused/appellant) and they would not leave them alive. These witnesses have also stated that their father Manta Singh and their brother Kala Singh ran out of the ‘Jhala and they were chased by the appellants. The appellants over poured their father Manta Singh and beat him due to which he fell down on the earth and died at the spot.

24- The medical version adduced by the prosecution shows that deceased Manta Singh sustained ten injuries on his person. P.W.4, Dr.

Suresh Chandra Pant conducted the autopsy on the body of Manta Singh and found three incised wounds, one on the fore-head, one on the left side of scalp at the top of the head and one at the right ear. The doctor also found two lacerated wounds, one on the left side of abdomen and other on the lateral aspect of right thigh. The doctor also found four contusions and one abrasion on the person of the deceased. The doctor opined that the death was caused due to the head injury sustained by the deceased.

25- The another witness P.W.5, Dr. Birendra Singh also examined Km. Jamuna Kaur D/o Manta Singh on 21.11.85 at about 12.55 P.M. and found three incised wounds, one on the head, one on the left hand and one above the left ear. The doctor also found one contusion and two abraded contusions on her person. The doctor opined that the incised wounds on the person of this injured could be caused by the sharp edged weapon and other injuries could be caused by blunt object.

26- P.W.5, Dr. Birendra Singh also examined Km. Swarn Kaur on the same day at 1.55 P.M. and found two incised wounds, one at the left thumb and another above the right ankle. He also found two contusions on her person. The doctor opined that the incised wounds were caused by sharp edged object, while the contusions were caused by blunt object.

27- Dr. Birendra Singh also examined Smt. Vira Bai W/o Manta Singh on 21-11-1985 at 2.50 P.M. and found seven injuries on her person, out of which six injuries were contusions and one abraded contusion. The doctor opined that all the injuries caused on the person of Smt. Vira Bai were by blunt hard object.

28- This doctor also opined that all the injuries to the above injured persons were found fresh and could be caused on 21.11.85 at about 8 A.M.

29- This doctor also examined Km. Maya Kaur (appellant) on 21-11-85 and found one stab wound below left eye, one incised wound in the left wrist, one lacerated wound above the right ear and one contusion on the scapular region back. The doctor medically examined Maya Kaur at 12.10 P.M. on the aforesaid date. The doctor opinion that the incised wound was caused by sharp edged weapon

and stab wound was caused by pointed objected whereas the lacerated and contusion wounds were caused by blunt hard object. The doctor also opined that the injuries on the person of Maya Kaur were also fresh.

30- This doctor also medically examined Munsha Singh (accused/appellant) on 21-11-85 at 12.35 P.M. and found one stab wound in his left thigh. The doctor opined that this injury was fresh in duration and was caused by some pointed object.

31- The injuries on the person of the appellants Munsha Singh and Maya Kaur cannot be said to be self-inflicted or manufactured in any manner. However the duration of the injuries on the person of Munsha Singh and Maya Kaur also tallies with the alleged time of the occurrence. Therefore, in view of the injuries sustained by both sides, we are of the definite opinion that there was an assault by both the sides and both sides, i.e. the complainant as well as the accused/appellants sustained injuries during the course of the occurrence. In view of the cross-version adduced by both the sides, it is quite clear that both the parties were inimical to each other and having grudge hence on account of the animus this Marpit took place and both the parties sustained injuries.

32- Now it is noteworthy that appellant Munsha Singh, who was allegedly armed with sword at the time of commission of crime and caused injuries on the side of the complainant with the sword is dead. The incised wounds on the person of the deceased were responsible for causing his death. The post mortem report of Manta Singh would further make the picture clear that Manta Singh sustained either incised wounds or contusions or lacerated wounds or abrasions on his person. The nature of injuries sustained by deceased clearly establishes this aspect that the deceased sustained injuries by some sharp edged weapon, i.e., sword etc or by some blunt and hard object, i.e. Lathi etc. Maya Kaur is another accused/appellant, who has also died and she was allegedly having a lathi in her hand at the time of the occurrence. Therefore , accused/appellants Munsha Singh and Maya Kaur can be said to have caused the injuries on the person of deceased Manta Singh. The appellant Santokh Singh was allegedly armed with spear in his hand and there is no stab wound or punctured

wound on the person of the deceased. Therefore, it cannot be definitely said that appellant Santokh Singh is responsible for causing injuries on the person of deceased. Similarly appellant Chhinda Singh is also alleged to have a Kampa (Daoo) in his hand and has caused injuries with the respective weapon in his hand, while there is no Kampa injury found on the person of the deceased. Therefore, it is also not clear weather accused/appellant Chhinda Singh also participated in the commission of crime or not.

33- Likewise in case if we examine the medical examination reports of the injured eye witnesses Km. Jamuna, Km. Swarn Kaur and Smt. Vira Bai, it reveals that these injured eye witnesses had sustained either incised wounds or contusions or abrasions on their persons, which could only be caused either by sharp edged weapon or by hard blunt object, like Lathi. Both of the appellants Santokh Singh and Chhinda Singh have been assigned the role of causing the injuries on the complainant side with their respective weapons, i.e. spear and Kampa and no injury, either by spear or Kampa is found either on the person of the deceased or on the persons of any of the injured eye witnesses. Therefore, the participation of appellants Santokh Singh and Chhinda Singh in this case, appears to be doubtful.

34- The prosecution has failed to explain the injuries on the person of the accused/appellants Munsha Singh and Maya Kaur. The injuries on the person of Maya Kaur is the stab would above the left eye-brow which is a vital part of the body and the lacerated wound bone deep above the right ear which is also a vital part of the body. This is true that the injuries on the person of appellant Munsha Singh and Maya Kaur were found simple in nature but the duration of the injuries tallies with the alleged time of the occurrence and the nature of the injuries also show that these could not have either been manufactured or concocted or self-inflicted in any manner. Therefore, there is ample evidence on the record to establish that the occurrence took place in a different manner altogether in which the accused/appellants sustained injures on their persons. Both the appellants Munsha Singh and Maya Kaur were promptly examined by the doctor and they also lodged F.I.R. stating the relevant facts and alleging that it was the complainant party which was the aggressor. Therefore, we are of the

view of the medical version does not find any corroboration with the ocular version advanced by the prosecution. The participation of appellants Chhinda Singh and Santokh Singh appear to be doubtful in view of the absence of any injury either on the person of deceased or on the persons of injured eye witnesses, by Ballam(spear) or Kampa (Daoo).

35- The another important aspect of this case is that the accused/appellant Chhinda Singh was having a Kampa in his hand and caused injuries with his weapon at the time of the occurrence. The prosecution case further shows that accused/appellant Santokh Singh was also having a spear in his hand and caused injuries with his weapon. Prosecution case further shows that accused/appellant Munsha Singh was having a sword in his hand while accused/appellant Maya Kaur was having a Lathi in her hand and caused injuries with their respective weapons. All these weapons were taken into possession by the Investigating Officer and were sent for chemical examination. The recovery memo, by which the sword, spear, Kampa (Daoo) and Lathi were taken in possession, shows that the Investigating Officer recovered all these weapons from the house of the accused/appellants. This recovery memo reveals that sword, Lathi, spear and Kampa(Daoo) all were having blood-stains. The I.O. took all these weapons into possession and thereafter sent them for chemical examination. The Chemical Examiner's Report is available on the record and it shows that the sword and Lathi, which were item Nos. 11 and 10 respectively, were having disintegrated blood-stains while Kampa and spear shown at serial Nos. 9 and 12 respectively, did not have any blood-stains. The report of the Chemical Examiner thus making the picture further clear that absence of any blood-stain on the spear and Kampa, which were allegedly in the hands of appellants Santokh Singh and Chhinda Singh at the time of the occurrence, exclude the possibility of their implication in the crime. It is, therefore, quite clear that the occurrence did not take place in the manner, as has been alleged by the prosecution.

36- In view of the discussion made above, the present case appears to be one, where the little grain has been mixed up with so much of chaff that it is almost not possible to separate the grain, hence we are

satisfied that there is a reasonable doubt about the participation of the appellants Santokh Singh and Chhinda Singh in the incident and in the manner as alleged by the prosecution, the benefit whereof must go to them.

37- On the basis of the aforesaid reasons, we are of the view that the appellants Santokh Singh and Chhinda Singh are entitled to the benefit of doubt. The prosecution has not proved it case beyond reasonable doubt as it has not disclosed the true genesis of the occurrence, while the evidence on the other hand disclose that the occurrence took place in a different manner in which two members of the defence party also suffered injuries on their persons.

38- We, accordingly allow the appeal, set aside the impugned judgment and order dated 14-10-1988, passed by the Sessions Judge Nainital, in S.T.No. 52/1986, convicting and sentencing the appellants Santokh Singh and Chhinda Singh.

39- Both the appellants are on bail. Their bail bonds are cancelled and sureties discharged.

40- Let the record be sent back to trial court.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB